

Burma and the **Responsibility to protect**:

first, do more good than harm

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Paranoid and mistrustful of the outside world, Burmas generals were criminally tardy in permitting emergency humanitarian supplies and personnel to come into the country after a devastating cyclone in early May. (...)

In the immediate aftermath, the rising tide of anger, outrage and frustration led Frances Foreign Minister Bernard Kouchner to suggest invoking the **Responsibility to protect (R2P)** in the UN Security Council as the legal means to prise open Burmas borders to outside help. The call, later retracted by Kouchner as being inappropriate in a non-conflict situation, generated an intense debate in policy, advocacy and media circles that is worth parsing into moral, conceptual, legal, political and practical components.

**R2P** was a creative and innovative reformulation of the old humanitarian intervention debate by a Canadian-sponsored but independent international commission. With singularly bad timing, we published our report at the end of 2001. Yet less than four years later a uniquely rapid timeframe for such a landmark normative shift it was adopted without a dissenting vote by world leaders at the UN summit. In paragraphs 138 and 139 of the summits outcome document, the prime ministers and presidents of the world affirmed that every state bears the **Responsibility to protect**

its population. They further declared that they were prepared to take collective action, in timely and decisive manner, through the Security Council and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations.

There is no morally significant difference between large numbers of people being killed by soldiers firing into crowds or the government blocking help being delivered to the victims of natural disasters.

Conceptually, the shift from the crime of mass killings by acts of commission like shooting people and acts of omission like preventing them from getting food and medical attention is a difference of degree, not kind.

Legally, the four categories where **R2P** apply are genocide, war crimes, ethnic cleansing, and crimes against humanity. In our original report, we had explicitly included overwhelming natural or environmental catastrophes causing significant loss of life as triggering

**R2P**

if the state was unable or unwilling to cope, or rebuffed assistance. This was dropped by 2005. But crimes against humanity was included and prima facie would seem to apply to the Burmese generals actions in blocking outside aid.

Politically, however, we cannot ignore the significance of the exclusion of natural and

environmental disasters in 2005. Clearly, the normative consensus on the new global norm did not extend beyond the acts of commission of atrocity crimes by delinquent governments. To attempt to reintroduce it by the back door today would strengthen suspicion of Western motivations and reinforce cynicism of Western tactics. The UN must base its decisions on the collectively expressed will of its member states, not on that of an independent commission or individual member states. Unlike previous decades, the new unity of the global South, led by Brazil, China, India and South Africa, is based in a position of strength, not weakness. The West can no longer set or control the agenda of international policy discourse and action. (...)

(...) Any effort to invoke **R2P** formally in the Security Council would have the counter-productive effect of damaging **R2P** permanently across Asia and more widely in developing countries.

(...) It would be short-sighted to rule out the relevance and application of **R2P** should the situation not improve and people start dying in large numbers from the after-effects of Cyclone Nargis. Victims have the right to receive all available assistance; governments, host as well as foreign, have a duty to provide and facilitate it. We should not rule out laying charges of crimes against humanity against the top leaders in due course after the emergency has passed.

In the meantime, though, it bears emphasizing that **R2P** is much more fundamentally about building state capacity than undermining state sovereignty. The scope for military intervention under its provenance is narrow and tight. The instruments for implementing its prevention and reconstruction responsibilities on a broad front are plentiful. While the reconstruction agenda for Burma is self-evident, it is worth returning to the tsunami of Boxing Day 2004 to illustrate the prevention agenda. The responsibility to prevent would have meant, firstly, installing an early detection and warning system for earthquakes and tsunamis around the Indian Ocean along the lines of that already in place around the Pacific. Second, it would have required such preventive measures as strengthening instead of eroding natural barriers like mangrove swamps that absorb and dilute the destructive power of tsunamis. And third, it would have meant advance training and stockpiling of supplies for effective civil defence measures like food, medicines and paramedical personnel. In other words, capacity, capacity and capacity that strengthen sovereignty and help state authorities to exercise it more responsibly.

Finally, there is also the question of which is more damaging to **R2P** in the longer term: invoking or ignoring it in the context of natural disasters like Cyclone Nargis. If the invocation does not help in the immediate emergency and may indeed cause even more determined opposition; and if it causes the growing backlash against

**R2P**

to gather pace; then the painfully forged consensus on the

**R2P**

norm will fracture without any material help being provided to the displaced and distressed. And that means that help will be less forthcoming to the next group of victims of large-scale killings.

The correct equation thus is that invoking

**R2P**

in Burma would have endangered lives elsewhere tomorrow without saving any and possibly even delaying help for the Nargis victims today. Feeling good about ones own moral superiority

by accusing others of privileging a norm over saving lives is a peculiar form of self-indulgence that perpetuates the killing fields without alleviating anyone's suffering.

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